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“AS IF FOR AN ACT OF PIRACY”

The treaty concluded between the United States, the British Empire, France, Italy and Japan at the Washington Conference on February 6, 1922, which imposes limitations upon the use of submarines as commerce destroyers in war and is generally known as the Declaration of Washington, provides in Article III as follows:

The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

The rules referred to are stated in Article I of the treaty as follows:

The Signatory Powers declare that among the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, the following are to be deemed an established part of international law;

(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

It appears from the published records of the Conference that in the discussion among the representatives of these five Powers as to the declaration that a violation of these laws of war would be punished “as if for an act of piracy,” assent was given to the following propositions as the legal basis of this declaration: that the rules, the violation of which is to be punished as for an act of piracy, are rules of the existing laws of war; that the five Powers represented are competent to make a declaration characterizing a violation of the existing laws of war as a crime which would subject the violator to punishment; that they are competent to declare that those who violate the laws of war are punishable as for acts of piracy; that as they were not making law, but a declaration regarding existing law, no limitation of its application to the Powers represented was necessary.

They also assented to the following limitations upon their powers: that it would not be competent for them to make an agreement between themselves which would have the effect of a law of nations, upon which they could pronounce a punishment as for piracy; that for this reason the punishment as for piracy could not be applied by this treaty to violations of the new rule

adopted in Article IV prohibiting the use of submarines as commerce destroyers; that until this rule passed beyond the contractual state and became an accepted rule of international law, they are constrained to limit their enforcement of it to their contractual obligations as between themselves.

With reference to the phrase "punishment as if for an act of piracy," its meaning was stated to be that a violation of the laws of war therein specified should be punished as an act of piracy is punished. It was further stated that under this provision the offender would not be subject to the limitations of territorial jurisdiction, the peculiarity about the punishment for piracy being that, although the act is done on the high seas and not within the jurisdiction of any country, nevertheless it can be punished in any country where the offender is found.

In the United States, Congress is empowered by the Constitution "to define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." Many treaty stipulations dealing with matters entrusted to Congress under the Constitution have been held to be self-executing without legislative action, although it has sometimes been the practice in similar cases for Congress to enact appropriate legislation for carrying out treaty stipulations.¹

The purpose of the treaty, so far as these provisions are concerned, is stated in the preamble to be "to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war." It is of interest to note that the provisions above quoted apply not merely to submarines but to surface ships of war as well when used as commerce destroyers, and as indicated by the preamble it is inspired by humane sentiments for the protection of lives rather than by the mere utilitarian purpose of protecting property, no mention of which is made in the treaty.

CHANDLER P. ANDERSON.

THE NOBEL PEACE PRIZE FOR 1921

The Nobel Peace Prize of approximately forty thousand dollars was intended to be awarded every year, and has been, with the exception of 1914, 1915, 1916 and 1918.

Usually the prize has been to one individual or has been divided between two candidates. On three occasions it was granted to institutions: in 1904, to the Institute of International Law, in 1910 to the Permanent International Peace Bureau of Berne, and in 1917 to the International Red Cross of Geneva.

In the year 1921 (on December 10th, to be accurate) the peace prize for 1921 was awarded, one half to Karl Hjalmar Branting, Prime Minister of Sweden, and one half to Christian Lous Lange of Norway, Secretary-General of the Interparliamentary Union. The award is made in Christiania by a committee of five members elected by the Norwegian Storting, "to the

¹Extent and Limitation of the Treaty-Making Power, by Chandler P. Anderson, *American Journal of International Law*. July, 1907.